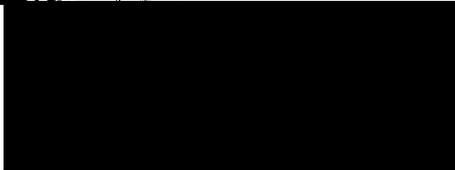




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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC 01 281 51451 Office: VERMONT SERVICE CENTER Date: DEC 27 2002

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a nursing care provider. It seeks to employ the beneficiary permanently in the United States as a registered nurse. The petitioner asserts that the beneficiary qualifies for a blanket labor certification pursuant to 20 C.F.R. 656.10, Schedule A, Group I. The director determined that the notice of filing of the Application for Alien Employment Certification, Form ETA 750, (ETA 750) was not provided to the bargaining representative or the employer's employees as prescribed in 20 C.F.R. 656.20(g)(3).

On appeal, the petitioner submits additional evidence.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

In this case, the petitioner filed an Immigrant Petition for Alien Worker (Form I-140) on September 24, 2001 for classification under section 203(b)(3)(A)(i) of the Act as a registered nurse. Aliens who will be employed as professional nurses are listed on Schedule A. Schedule A is the list of occupations set forth at 20 C.F.R. 656.10 with respect to which the Director of the United States Employment Service has determined that there are not sufficient United States workers who are able, willing, qualified and available, and that the employment of aliens in such occupations will not adversely affect the wages and working conditions of United States workers similarly employed.

20 C.F.R. 656.10 provides in pertinent part that an employer shall apply for a labor certification for a Schedule A occupation by the filing of the Form ETA 750 in duplicate with the appropriate Immigration and Naturalization Service office. The ETA 750 certifications shall include:

1. Evidence of prearranged employment for the alien beneficiary by having an employer complete and sign the job offer description portion of the application form.

2. Evidence that notice of filing the Application for Alien Employment Certification was provided to the bargaining representative or the employer's employees as prescribed in 20 C.F.R. 656.20(g)(3).

In this case, Form I-140 did not include the evidence described in sub-paragraph 2, above. On October 25, 2001, the director requested that the petitioner submit a copy of the letter from the employer to the bargaining representative or a copy of the job offer notice that was posted at the facility or employment location. The petitioner responded with a web site listing of over 100 "Career Opportunities."

The director denied the application based on the petitioner's failure to provide acceptable evidence that the position had been posted in accordance with 20 C.F.R. 656.20(g)(3).

On appeal, the petitioner submits a copy of the notice that it continuously posts concerning its recruitment of foreign nurses. In a statement of February 13, 2002, the petitioner's President attaches a copy of the Application for Alien Employment Certification Form ETA 750, Part A (ETA 750A) pertinent to the beneficiary. The President specifies that the petitioner timely posted it next to the recruitment notice as a result of the filing of the ETA 750. This evidence indicates that the petitioner notified its employees as prescribed in 20 C.F.R. 656.20(g)(3). Therefore, the petitioner has overcome the objections as to the posting. No other deficiency appears in the record.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has met that burden.

ORDER: The appeal is sustained.